

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00641-COA

**DONALD MCKEOWN, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE
DECEDENT, JANICE MCKEOWN, FOR AND
ON BEHALF OF ALL WRONGFUL DEATH
BENEFICIARIES AND AS ADMINISTRATOR
OF THE ESTATE OF JANICE MCKEOWN,
DECEASED**

APPELLANT

v.

ROBERT V. PITCOCK, M.D.

APPELLEE

DATE OF JUDGMENT:	03/24/2010
TRIAL JUDGE:	HON. ROBERT WILLIAM ELLIOTT
COURT FROM WHICH APPEALED:	UNION COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	SIDNEY RAY HILL III
ATTORNEYS FOR APPELLEE:	DIANE V. PRADAT L. CARL HAGWOOD JOHN MICHAEL COLEMAN BRADLEY K. OVERCASH
NATURE OF THE CASE:	CIVIL - WRONGFUL DEATH
TRIAL COURT DISPOSITION:	EXCLUDED DEATH CERTIFICATE FROM EVIDENCE AND ENTERED JURY- VERDICT JUDGMENT FOR DEFENDANT/APPELLEE
DISPOSITION:	AFFIRMED - 07/26/2011
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

GRIFFIS, P.J., CARLTON AND MAXWELL, JJ.

CARLTON, J., FOR THE COURT:

¶1. Donald McKeown, individually and as personal representative of the decedent, Janice

McKeown, for and on behalf of all wrongful-death beneficiaries and as administrator of Janice's estate, appeals the judgment of the Union County Circuit Court denying his motion for a new trial. Donald claims that the circuit court erred in excluding the cause of death listed on Janice's death certificate from being admitted as evidence during trial. Donald now appeals to this Court. Finding no reversible error, we affirm.

FACTS

¶2. Janice reported to the emergency room at the Baptist Memorial Hospital – Union County Emergency Room on October 12, 2003, complaining of trouble breathing and chest pain. Dr. Robert V. Pitcock, the emergency-room doctor, ordered a chest x-ray, which showed that Janice's heart was enlarged. Further tests revealed that Janice had a left bundle branch block.¹ Dr. Pitcock diagnosed Janice with bronchitis and then sent her home, with instructions to follow up with her local medical doctor.

¶3. Janice's symptoms persisted, and she scheduled a follow-up visit with a local nurse practitioner, Carolyn Estes. Janice saw Nurse Estes on four occasions, the final of which Nurse Estes diagnosed Janice with early congestive heart failure.

¶4. On the evening of November 15, 2003, five days after her last visit to Nurse Estes, Donald, Janice's husband, found Janice lying on the floor in the master bedroom of their house, unresponsive. Donald immediately called 911, but the paramedics declared Janice dead upon their arrival. The paramedics subsequently contacted the Union County Coroner's office. The coroner, Mark Golding, was out of town and unavailable, so Kim Bumpas, the

¹ This is a cardiac conduction abnormality where activation of the left ventricle is delayed.

deputy coroner, reported to the McKeowns' home. After examining Janice's body and its surroundings, Deputy Coroner Bumpas asked Donald if he wanted an autopsy performed. Donald later testified that Deputy Coroner Bumpas recommended not performing one, since, in her opinion, it appeared that Janice had died of a massive heart attack. Donald stated that based on Deputy Coroner Bumpas's recommendation, he chose not to have an autopsy performed.

¶5. Deputy Coroner Bumpas continued her standard investigation into Janice's death by taking a medical history and taking note of Janice's medications. Deputy Coroner Bumpas also spoke with Nurse Estes about the medications she had prescribed to Janice for her heart condition. After completing her investigation, Deputy Coroner Bumpas filled out and signed the death certificate, listing the cause of death as "Immediate cause: cardiopulmonary failure; Due to or a Consequence of: Congestive Heart Failure."

¶6. Donald, individually and as personal representative for Janice's estate, filed a wrongful-death suit in the Union County Circuit Court against Dr. Pitcock; Baptist Hospital; Nurse Estes, C.N.F.P; North Mississippi Medical Clinics, Inc. d/b/a New Albany Medical Clinic; and Dale Wing, M.D., alleging that these medical providers had breached the standard of care in failing to diagnose and treat Janice's serious heart condition, and he claimed that said breach had caused Janice's death. Donald specifically alleged that Janice's symptoms were signs of a serious heart condition, and he argues that Janice should have received a complete cardiac evaluation, been admitted to the hospital, and referred to a heart specialist to perform the necessary catheterization.

¶7. Baptist Hospital and Dr. Wing were voluntarily dismissed from the case. Prior to

proceeding to trial, the circuit court held a hearing on all pending motions in limine, including the defendants' motion to exclude the cause of death listed on the death certificate. After reviewing the briefs of the parties, hearing arguments from each side, and considering testimony from Deputy Coroner Bumpas, the circuit judge granted the motion to exclude the cause of death listed on the death certificate, but he allowed the remaining information on the death certificate to be admitted into evidence. The circuit judge cited Deputy Coroner Bumpas's lack of "education, training, and experience necessary to give an opinion regarding the cause of death" as the basis for his decision to grant the motion. However, the circuit judge allowed Donald to testify as to Deputy Coroner Bumpas's statements² to him after arriving on the scene after Janice's death, as well as her statements to Donald regarding her opinion of Janice's cause of death.³ Donald also called two expert witnesses to testify regarding his theory as to the cause of Janice's death.

¶8. After a trial held on January 25-29, 2010, the jury found that Dr. Pitcock had violated the standard of care in treating Janice. However, the jury did not find that this breach of the standard of care caused Janice's death. The jury also found that Nurse Estes did not violate the standard of care in her treatment of Janice. Based on the jury verdict, the circuit court entered its judgment in favor of the defendants. Donald filed a motion for a new trial on the issues of causation and damages only as to his claims against Dr. Pitcock, based on the

² We note that Donald chose not to call Deputy Coroner Bumpas to testify at trial.

³ After Donald's testimony, the circuit court cautioned the jury that Deputy Coroner Bumpas lacked the experience or qualifications to determine the cause of death, and the court instructed the jury that Donald's testimony was not to be considered as evidence of Janice's cause of death.

court's exclusion of the cause of death listed on the death certificate. The circuit court denied Donald's motion for a new trial. Donald now appeals.

STANDARD OF REVIEW

¶9. “The standard of review regarding admission or exclusion of evidence is abuse of discretion. Where error involves the admission [or exclusion] of evidence, this Court ‘will not reverse unless the error adversely affects a substantial right of a party.’” *Ladnier v. State*, 878 So. 2d 926, 933 (¶27) (Miss. 2004) (quoting *Whitten v. Cox*, 799 So. 2d 1, 13 (¶27) (Miss. 2000) (citations and internal quotations omitted)).

DISCUSSION

Whether the circuit court erred in excluding the cause of death listed on the certified copy of the death certificate of the decedent.

¶10. Donald argues that the circuit court erred by excluding the cause of death listed in Janice's death certificate, citing Mississippi Code Annotated section 41-57-9 (Rev. 2009) and a recent Mississippi Supreme Court opinion, *Birkhead v. State*, 57 So. 3d 1223 (Miss. 2011), as authority. The record reflects that the circuit court excluded the cause of death listed in the death certificate because of the determination that Deputy Coroner Bumpas was not qualified to give an opinion regarding the cause of death. In its motion in limine, the defense argued that Janice's death certificate was unreliable as to the cause of death. The defense claimed that Deputy Coroner Bumpas had relied solely upon statements from Donald and Nurse Estes, as well as a visual inspection of the body, and failed to perform any further investigation when making her opinion as to the cause of Janice's death set forth on the death certificate. The defense also asserted that the deputy coroner lacked sufficient qualifications

to provide a medical opinion as to the cause of death. The defense submits that even though section 41-57-9 provides that death certificates are admissible, the circuit judge still serves as the gatekeeper to evaluate prejudice relative to Mississippi Rules of Evidence 401 and 403, and the qualification of an expert as outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993). During the pretrial hearing on the motion in limine, Deputy Coroner Bumpas testified that in the absence of an autopsy, she could not exclude several other causes of sudden death as the probable cause of Janice's death.

¶11. Mississippi Code Annotated 41-61-57(3) (Rev. 2009) states, in part, that:

Any county may have deputy county medical examiners or deputy county medical examiner investigators as deemed necessary who shall be appointed jointly by the board of supervisors and the CME or CMEI. However, when the population of a county reaches a total of twenty thousand (20,000) or greater, there shall be one or more officially appointed deputies. *Deputies shall be subject to the same qualifications, training and certification requirements, and shall possess the same authority and discharge the same duties, as other county medical examiners or county medical examiner investigators, and shall receive fees and expenses as provided in Sections 41-61-69 and 41-61-75.*

(Emphasis added). However, Donald argues that the qualifications of Deputy Coroner Bumpas are not the issue on appeal and asserts that deputy coroners may perform the same functions as coroners by statute. Instead, he claims that the actual issue is whether or not the cause of death listed on the death certificate is admissible, as set forth in section 41-57-9. Donald asserts that he was simply seeking to admit a complete, certified copy of a death certificate into evidence, as authorized by statute. In support of his assertions, Donald relies upon section 41-57-9, which states that “[a]ny copy of the records of birth, sickness or death, when properly certified to by the state registrar of vital statistics, to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated.” Donald

claims that under section 41-57-9, the circuit court should have allowed the entire death certificate into evidence, and then the court should have allowed Dr. Pitcock the opportunity to rebut this prima facie evidence and, ultimately, allow the jury to decide the issue of causation.

¶12. Significantly, upon our review, we find that the record reflects that Donald testified that Deputy Coroner Bumpas told him that Janice had died of a massive heart attack. When questioned about his conversation with Deputy Coroner Bumpas regarding whether or not an autopsy should be performed, Donald testified that:

[Deputy Coroner Bumpas] . . . said it looked like she had had a massive heart attack. She asked me did I want an autopsy, and I told her I didn't know. I had never had anybody die before, you know. I didn't know if I needed to or not. She said, well, it looks like it was a massive heart attack and she didn't see any reason for one.

After objections from the defense, the circuit judge cautioned the jury that Deputy Coroner Bumpas lacked the experience or qualifications to determine the cause of death, and the court instructed the jury that Donald's testimony was not to be considered as evidence of Janice's cause of death.

¶13. We also note that Donald called the following two expert witnesses to testify as to the circumstances of Janice's death: Julie Davey, a nurse practitioner, and Dr. Frank Westmeyer, an expert witness in the field of emergency medicine and care. Nurse Davey's testimony showed that Janice's symptoms appeared consistent with those of heart disease, although Nurse Davey was not allowed to give her opinion regarding the cause of death. Dr. Westmeyer testified⁴ that he believed that Janice had suffered from heart disease and stated:

⁴ Dr. Westmeyer's testimony was presented by video deposition.

“It is my opinion she died of coronary artery disease, probably a myocardial infarction, perhaps complicated by congestive heart failure.” Our review of the record shows that Donald’s theory that Janice had died of heart failure was indeed placed before the jury through his own testimony and also the testimonies of these two expert witnesses. We find no abuse of discretion in the circuit court’s admission of evidence as to cause of death through Donald’s and the expert witnesses’ testimonies. *Harris v. State*, 970 So. 2d 151, 154 (¶10) (Miss. 2007) (“The standard of review governing the admissibility of evidence is whether the trial court abused its discretion.”).

¶14. Donald urges this Court to find that the circuit court erred in failing to admit the entire death certificate, and he asserts that the Mississippi Rules of Evidence do not apply to this case at hand. Donald relies upon section 41-57-9 in arguing that the death certificate must be admitted into evidence without regard to the Mississippi Rules of Evidence. However, Justice Randolph, writing for the Mississippi Supreme Court in *Birkhead*, 57 So. 3d at 1232 (¶32), clearly explained in that case, a circuit court committed no error in following the rules of evidence in applying the hearsay exception set forth in Mississippi Rule of Evidence 803(9) for admission of records of vital statistics. M.R.E. 1103 (“All evidentiary rules, whether provided by statute, court decision or court rule, which are inconsistent with the Mississippi Rules of Evidence are hereby repealed.”). Similarly, in this case, the circuit court committed no error in applying the Mississippi Rules of Evidence in evaluating the admissibility of the death certificate as a record of vital statistic. *See* M.R.E. 401, 403, 702.

¶15. In this case, the circuit court dealt with the application of Rule 702 to the deputy coroner’s opinion as to the cause of death, as opposed to the confrontation issue faced in

Birkhead. The circuit court herein found that Deputy Coroner Bumpas admitted on the stand that she was not able to make the determination as to cause of death as reflected on the death certificate, to wit: cardiopulmonary failure and congestive heart failure. The circuit court then properly determined that Deputy Coroner Bumpas was not qualified to give an opinion as to cause of death; thus, the circuit court ordered the alleged cause of death redacted from the death certificate. The circuit court allowed the remainder of the death certificate to be admitted into evidence.

¶16. As previously noted, when reviewing the exclusion of evidence, this Court will only reverse if the error adversely affects a substantial right of the party. *Ladnier*, 878 So. 2d at 933 (¶27). Additionally, if any error occurred in the circuit judge's exclusion of the cause of death listed on Janice's death certificate, we do not find such error to rise to the level of reversible error under the facts of this case. No reversible error occurred since the circuit court allowed Donald to present this evidence through other witnesses, thereby allowing this evidence to be considered by the jury. The testimonies from Donald, Nurse Davey, and Dr. Westmeyer informed the jury about Donald's theory as to the cause of Janice's death. We, therefore, cannot find that the exclusion of the cause of death listed on the death certificate adversely affected Donald's substantial rights. *See Simmons v. State*, 805 So. 2d 452, 498 (¶126) (Miss. 2001); *Flaggs v. State*, 999 So. 2d 393, 403-04 (¶¶31-32) (Miss. Ct. App. 2008). Therefore, we find no abuse of discretion by the circuit judge in excluding the cause of death listed on the death certificate. Accordingly, we affirm.

¶17. THE JUDGMENT OF THE CIRCUIT COURT OF UNION COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

LEE, C.J., IRVING AND GRIFFIS, P.JJ., MYERS, ISHEE, ROBERTS AND RUSSELL, JJ., CONCUR. MAXWELL, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY ROBERTS AND RUSSELL, JJ. BARNES, J., NOT PARTICIPATING.

MAXWELL, J., SPECIALLY CONCURRING:

¶18. I agree with the majority’s affirmance but write separately to address McKeown’s reliance on the Mississippi Supreme Court’s recent decision in *Birkhead v. State*, 57 So. 3d 1223 (Miss. 2011). McKeown stringently and quite convincingly argues that, based on *Birkhead*’s apparent inclusive view of Mississippi Rule of Evidence 803(9), the deputy coroner’s statement of the cause of Janice’s death, though clearly opinion evidence, should have been admitted because it was contained in Janice’s death certificate.

Birkhead v. State

¶19. In *Birkhead*, a criminal case, the supreme court considered whether a circuit court erred in admitting a death certificate showing the time of death. *Id.* at 1231-33 (¶¶28-34). The supreme court noted: “No legitimate debate can be made that a considerable amount of the information contained within any death certificate is hearsay. Similarly, no debate exists that a death certificate is a vital statistic.” *Id.* at 1231 (¶31) (citing Miss. Code Ann. §§ 41-57-1 to 41-57-2 (Rev. 2009)). Indeed, in Mississippi, death certificates are governed by the state board of health’s bureau of vital statistics. Miss. Code Ann. § 41-57-1.

¶20. The majority in *Birkhead* recognized that Rule 803(9) “provides a hearsay exception regarding records of vital statistics.” *Birkhead*, 57 So. 3d at 1231 (¶31). The pertinent part of this rule states:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

.....

(9) Records of Vital Statistics. Records or data compilations of vital statistics, in any form, if the report thereof was made to a public officer pursuant to requirements of law.

M.R.E. 803(9). The *Birkhead* majority also emphasized that “[u]nlike Rule 803(8) regarding public records and reports, Rule 803(9) provides no exclusions to its hearsay exception.” *Birkhead*, 57 So. 3d at 1232 (¶31).

¶21. Justice Kitchens disagreed. His dissent centered on concerns about the admissibility of certain entries on death certificates. *Id.* at 1243-44 (¶79) (Kitchens, J., dissenting). Reasoning that the contents of death certificates are still subject to the remaining rules of evidence, Justice Kitchens cited *Flowers v. State*, 243 So. 2d 564 (Miss. 1971), which held that death certificates could be used to show *only* the “physical cause of death.” *Id.* at 1244 (¶82) (Kitchens, J., dissenting). For example, a coroner’s opinion that the cause of death was suicide, under his analysis would be excluded, but the prime cause—a gunshot wound—would not.

¶22. The majority rejected this approach. It emphasized that *Flowers* is “old law,” and the order adopting the Mississippi Rules of Evidence “includes no *Flowers*-like qualification.” *Id.* at 1232 (¶31). Under Rule 1103, “[a]ll evidentiary rules, whether provided by statute, court decision or court rule, which are inconsistent with the Mississippi Rules of Evidence” were repealed. *Id.* (quoting M.R.E. 1103). Thus, the majority concluded that “death certificate and the ‘records of vital statistics’ contained therein are admissible”—apparently without further inquiry. *Id.* at 1232 (¶32) (quoting M.R.E. 803(9)).

McKeown’s Case

¶23. McKeown argued at trial and on appeal that the deputy coroner’s meager training and inability to be qualified in court to give an opinion on Janice’s death does not preclude the admissibility of the certificate’s stated cause of death. He claims this evidentiary snag over her lacking qualifications is trumped by Rule 803(9) and Mississippi statutory law providing that “records of . . . death, when properly certified to by the state registrar of vital statistics, to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated.” Miss. Code Ann. § 41-57-9 (Rev. 2009).

¶24. The circuit judge considered this argument but leaned on our evidentiary rules regarding expert-opinion testimony. He found the deputy coroner offered an opinion in the death certificate—that the stated cause of Janice’s death was “cardiopulmonary failure; Due to or a Consequence of: Congestive Heart Failure.” The circuit judge next concluded the deputy coroner was not qualified to give this opinion. Thus, he admitted the record but ordered the stated cause of death stricken from the death certificate under Mississippi Rule of Evidence 702.

¶25. I generally find it hard to fault the trial judge’s reasoning. Both parties agree that, due to her lacking credentials, no imaginable circumstance would permit the deputy coroner to give an expert opinion about Janice’s cause of death. Yet if *Birkhead*’s application of Rule 803(9) extends to these circumstances, this inadmissible opinion testimony slips past the gatekeeper and into the jury box simply because it is typed on a death certificate.

¶26. While this result seems illogical under traditional principles and case law, I point out that such a result would not render the *Birkhead* decision an aberration. To the contrary, a sampling of somewhat similar recently decided cases shows a post-rules-of-evidence trend

to admit opinions in death certificates. In *Corlett v. Smith*, 763 P.2d 1172, 1177 (N.M. Ct. App. 1988), the Court of Appeals of New Mexico confronted a similar argument that the listed cause of death in a death certificate was inadmissible opinion testimony. It disagreed and reasoned that a statement of the cause of death is akin to a “factual finding, similar in nature to the factual findings of the identity of the deceased, the time and the date of death[.]” *Id.* The Court of Appeals of Michigan, noting Michigan’s recent adoption of the Rules of Evidence, particularly Rule 803(9), similarly concluded the statement of the cause of death in a death certificate is not inadmissible opinion testimony. *Greek v. Bassett*, 316 N.W.2d 489, 492-94 (Mich. Ct. App. 1982). It reasoned: “If we were to require that a statement in a death certificate be a ‘fact’ in the sense of an absolute objective reality, virtually nothing in a death certificate would be admissible.” *Id.* at 492. Also, at least two federal district courts have also utilized Rule 803(9) to admit references to the cause of death appearing in a death certificates. *All Am. Life Ins. Co. v. Puckett Bros. Mfg. Co.*, 139 F. Supp. 2d 1386, 1392 (N.D. Ga. 2001); *Weiner v. Metro. Life Ins. Co.*, 416 F.Supp. 551, 558 (E.D. Pa. 1976).⁵

¶27. The Supreme Court of North Carolina has addressed McKeown’s precise argument in the context of a medical-malpractice case factually analogous to his. *Segrest v. Gillette*, 414 S.E.2d 334 (N.C. 1992). The North Carolina court conducted a particularly detailed analysis of its reliance on the rules of evidence to find error in a trial court’s exclusion of a coroner’s stated cause of death in a birth certificate. As a condition to admitting a death

⁵ I note that not all jurisdictions have followed this trend. Louisiana, even in the post-rules-of-evidence era, holds fast to its view that a coroner’s death certificate is competent proof of only the fact of death, not the cause of death. *Odom v. Sec. Indus. Ins. Co.*, 649 So. 2d 37, 39 (La. Ct. App. 1994).

certificate, the trial court struck from the certificate the county medical examiner's reference to "halothane anesthesia" as the cause of death. *Id.* at 336. The jury returned a defense verdict, and the plaintiff claimed this exclusion was error. *Id.* at 335-36. North Carolina has a similar statute to Mississippi's, providing that a death certificate is admissible as prima facie evidence of the facts stated therein. *Id.* at 337. And, like Mississippi, earlier North Carolina case law held that "the statute making death certificates admissible as prima facie evidence of the facts stated therein did not make admissible opinions as to the cause of death contained on the death certificate." *Id.*; compare *Rees v. Jefferson Standard Ins. Co.*, 5 S.E.2d 154, 155 (N.C. 1939) with *Flowers*, 243 So. 2d at 565. The *Segrest* court noted that *Rees* predated adoption of "The Evidence Code, Chapter 8C of the General Statutes" and that "Rule 803(9) excepts death certificates from exclusion under the hearsay rule without limit as to opinions as to the cause of death." *Segrest*, 414 S.E.2d at 337. In finding the cause of death admissible, the North Carolina court also found important its statutory provision that granted medical examiners authority to investigate a victim's cause of death. *Id.* Mississippi has a similar statute.

¶28. But the glaring distinction in North Carolina's reliance on the rules of evidence to admit death certificates is its recognition of the interplay between Rule 803(8) and Rule 803(9). This is precisely where *Segrest* and *Birkhead* diverge. *Segrest* considered Rules 803(8) and 803(9) in tandem, particularly its state's commentary to Rule 803(8)(C), which differs drastically from Mississippi's:

Part (C) covers factual findings resulting from an investigation made pursuant to legal authority. The term "factual findings" is not intended to preclude the introduction of evaluative reports containing conclusions or opinions.

Apparently North Carolina courts currently exclude statements in reports that only amount to an expression of opinion.

Segrest, 414 S.E.2d at 337 (quoting N.C.R.E. 803(8) cmt.). It concluded “from the language of Rule 803(9) and the Comment on Rule 803(8), that the rule that prohibits the introduction of death certificates containing opinions has been changed so that opinions contained on death certificates are no longer barred by the hearsay rule.” *Id.*

¶29. In contrast, the *Birkhead* majority relied solely on Rule 803(9) to affirm the judge’s admission of the time of death entered in the death certificate. But it had no choice but to veer wide of Rule 803(8)(C), since obviously *Birkhead* was a criminal case, and the State—not *Birkhead*—offered the death certificate to establish the time of death. *See* M.R.E. 803(8)(C) cmt. (“Even when admissible, public records under Subdivision (C) may only be used in civil cases and in criminal cases on behalf of a defendant against the state.”).

¶30. Comparing Mississippi’s Rules 803(8) and 803(9), Rule 803(9) concerns admission of “records of vital statistics.” Rule 803(8) governs the admission of “public records and reports.” Particularly, Rule 803(8)(C) makes admissible:

Records, reports, statements, or data compilations, in any form, of public offices or agencies . . . in civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless sources of information or other circumstances indicate lack of trustworthiness.

There is certainly some overlap between the two rules. So a death certificate could be considered either a record of vital statistics or a public record, as some courts have recognized. *See Blake v. Pellegrino*, 329 F.3d 43, 48 (1st Cir. 2003) (applying Rule 803(8) to the admissibility of a death certificate); *Segrest*, 414 S.E.2d at 337.

¶31. Though not applicable when the State seeks admission of a public record in a criminal case like *Birkhead*, I find Mississippi’s Rule 803(8)(C) and commentary provide strong support—in civil cases like this one—for a circuit judge to exclude the cited cause of death in a death certificate. The North Carolina court in *Segrest* relied on its State’s commentary to Rule 803(8)(C) to conclude its rule was “not intended to preclude the introduction of evaluative reports containing conclusions or opinions.” *Segrest*, 414 S.E.2d at 337. But Mississippi’s commentary to Rule 803(8)(C) differs vastly from North Carolina’s. See M.R.E. 803(8) cmt. Our state’s commentary emphasizes that “[t]o be admissible [investigative reports] must be factual findings made in an investigation which was conducted pursuant to lawful authority. *Opinions and conclusions contained in such reports should be excluded.*” *Id.* (emphasis added). The commentary further notes: “The rule expressly gives judges the discretion to exclude such reports.” *Id.* Rule 803(8)(C), which gives trial court’s discretion to exclude reports that “indicate lack of trustworthiness,” is consistent with Rule 702, which grants trial judges the discretion to exclude unreliable expert opinions. *Compare* M.R.E. 803(8)(C) *with* M.R.E. 702.

¶32. Because Mississippi’s Rule 803(8)(C) views opinions and conclusions in public reports as inadmissible hearsay, applying *Segrest*’s analysis to the Mississippi Rules of Evidence would appear to mandate exclusion of the cause of death in Janice’s death certificate.

¶33. Again, I note the *Birkhead* court addressed a criminal case and could not have justified admission of the entry in the death certificate under Rule 803(8)(C) when considering the admissibility of certain portions of a death certificate. However, *Birkhead* does not appear

to allow trial courts to consider both Rules 803(8) and 803(9) when deciding the admissibility of certain portions of a death certificate in civil cases. *See Birkhead*, 57 So. 2d at 1231 (¶30) (finding “no debate exists that a death certificate is a vital statistic,” which Rule 803(9) covers). Thus, *Birkhead* seems to create a brightline rule—that all information typed on a death certificate is a “record of a vital statistic” and, therefore, admissible under Rule 803(9). Judging from other cases I have referenced, such an outcome is neither unsupported nor unique.

¶34. With this in mind, I turn to the effect of this on McKeown’s case. Here, the circuit judge permitted McKeown to testify about the deputy coroner’s opinion of the cause of his wife’s death. McKeown also called two expert witnesses who both testified on the issue of causation. Thus, through other means, the circuit judge permitted McKeown to place his causation evidence before the jury. So even assuming *Birkhead* dictates admission of the stated cause of death, I agree with the majority’s analysis that under the circumstances of this case, the circuit judge’s exclusion of this portion of the certificate, if indeed it was error, was at most harmless error.

ROBERTS AND RUSSELL, JJ., JOIN THIS OPINION.